IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Bail Appl..No. 6274 of 2007()

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CRIME NO.422/05 OF OLLUR POLICE STATION

PETITIONERS/ACCUSED 1 TO 4

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1. SATHYAN, S/O. RAMAKRISHNAN,
THOPPIL HOUSE, VETTUKKAD P.O., THRISSUR DISTRICT.

2. CHANDRAN, S/O. KUNJU,
THOPPIL HOUSE, PUTHENKADU, VETTUKKAD P.O.,
THRISSUR.

3. SURESH, S/O. RAMAKRISHNAN,
THOPPIL HOUSE, VETTUKKAD P.O., THRISSUR.

4. ROY, S/O. KURIAKOSE,
MOOLEKKARA HOUSE, MANNAMANGALAM P.O., THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS: STATE

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THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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B.A.No. 6274 of 2007

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Dated this the 17th day of October, 2007

**O R D E R**

Application for anticipatory bail. The petitioners are accused 1 to 4. It is the allegation of the police that the petitioners were engaged in the culpable activity of illicit distillation of liquor on 18.6.2005. The four accused persons allegedly took to their heels on seeing the police party. Their names were ascertained and are available in the contemporaneous seizure mahazar as well as the occurrence report prepared. Investigation is in progress. It is at that stage that the petitioners have come before this Court seeking anticipatory bail.

2. The learned Prosecutor, on instructions, submits that the investigation is already over and final report has already been filed on 30.9.2007. Obviously this petition has been filed on 9.10.2007 after the petitioners received information about the filing of the final report. I must obviously assume also that apprehending coercive processes from court, the petitioners have come before this Court. It looks to me that the petitioners and the police are acting in collusion.

I fail to understand how the final report could be filed before and without apprehending the accused persons. How was their identity ascertained and confirmed by the Detecting Officer? What steps are taken to procure the arrest of the petitioners? I have repeatedly been expressing the need to ensure that proper investigation of crimes is conducted at higher levels of the police. The officer, who has detected this crime and investigated this case, must do a lot of explanation.

3. Be that as it may, I find absolutely no reason to justify the invocation of the extra ordinary equitable discretion available to this Court. Absence of an unsatisfactory investigation by the officials acting in collusion with the accused cannot certainly persuade this court invoking the equitable discretion under Section 438 Cr.P.C. No malice is alleged. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in

charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. The learned D.G.P., who happens to be present in Court, requests that the matter may be called once again for the D.G.P. to explain the prompt action that he proposes to take in the matter. Call on 29.10.2007.

**(R. BASANT)**
Judge

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